

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Dunn et al.**

Serial No.: **10/757,109**

Group Art Unit: **3644**

Filed: **January 14, 2004**

Examiner: **Abbott, Yvonne R.**

For: **STYPTIC APPLICATOR WITH FILE**

Commissioner for Patents
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Pursuant to the Official Gazette Notices of July 12, 2005 and February 4, 2006, Applicant respectfully requests Review of the Rejections that have been applied in the above-captioned patent application under the New Pre-Appeal Brief Conference Pilot Program.

1. The Claimed Invention

This application includes 12 independent claims, namely claims 1, 23, 47, and 61-69. Of those claims, all but claim 63 have been rejected.

All of the rejected independent claims set forth a styptic applicator for pets. When clipping the nails of a pet such as a dog is possible to clip off too much of the nail and cause bleeding. This is known as “quicking” the animal. Applicant has provided a styptic applicator that can be used in such situations, which may include a container for holding a styptic material, a styptic material, and an applicator for applying the styptic material to the affected area.

2. Rejection under 35 U.S.C. § 102(b) based on Burnett

Claims 1, 2, 5, 11, 18, 23, 24, 27, 30, 35, 36, 47, 48, 51, 57, 60 and 65 were rejected under 35 USC §102(b) based on US Patent 2,273,559 to Burnett (“Burnett”).

Burnett discloses a receptacle that is designed for use as a vanity case, presumably for women. The receptacle 5 is provided with a first section 6 that is designed to carry an

unspecified powder, presumably a talcum powder. It further includes a nail file 21 and a section for holding lipstick 18. There is no disclosure in the reference that the receptacle has any utility for use with pets, or that it could be used for dispensing or applying styptic material.

Independent claim 1 claims a styptic applicator for pets that includes a container with a chamber containing a styptic; and an applicator device for applying the styptic. Burnett does not disclose a styptic applicator, it is not for pets and it does not disclose an applicator device for applying styptic.

Independent claim 23 claims a styptic applicator for pets including storing means for holding a styptic; a styptic held within said storing means; and application means for applying said styptic. Burnett does not disclose a styptic applicator, it is not for pets, it does not disclose a storing means for holding a styptic, and it does not disclose a styptic or an application means for applying a styptic.

Independent claim 47 claims a styptic applicator for pets including a container with a chamber containing a styptic. Burnett fails to disclose a styptic applicator, it is not for pets and it does not disclose a chamber in which styptic is contained.

Independent claim 65 claims a styptic applicator for pets including storing means for holding a styptic; and application means for applying the styptic wherein the application means has a concave shape in order to hold the styptic. Burnett fails to disclose a styptic applicator, it is not for pets, it does not have a storing means for holding a styptic and it does not have an application means that has a concave shape in order to hold the styptic.

It is quite clear that none of these independent claims or any claim that depends directly or indirectly therefrom may properly be considered anticipated by Burnett.

3. Rejection of Claims 21, 39, 64 and 67 Under §103(a) Based on Burnett in view of Lenz

The Lenz reference discloses a styptic pencil. There is no disclosure in the Burnett reference having anything to do with styptic. This rejection is obviously without merit and it should be withdrawn. There is absolutely no suggestion or incentive present that would have led a person having ordinary skill in the art at the time Applicant's invention was made to combine the Lenz reference with Burnett as proposed in the rejection.

4. Rejection of Claims 1-5, 9-13, 18, 19, 23-27, 29-31, 36, 37, 47-51 and 55-60 under §103 Based on Griffiths in view of Burnett

The Griffiths reference, like Burnett, is not for pets and contains no disclosure whatsoever pertaining to styptic material, a container for storing styptic material or an applicator for applying styptic material. The idea that somehow this reference can be combined with Burnett in order to reject claims drawn to a styptic applicator for pets is simply ludicrous.

Both Griffiths and Burnett are nonanalogous prior art to Applicant's invention. Neither pertains at all to pets.

Furthermore, there is no suggestion or incentive that would have led a person having ordinary skill in the art to combine the references as proposed in the rejection. Moreover, even if the references were combined, it would not yield Applicant's claimed invention because neither of the references contains or suggests styptic material, a container for styptic material or an applicator for applying styptic material. Accordingly, the rejection lacks merit and should be withdrawn.

5. Rejection of Claims 1, 2, 5-9, 18, 23, 24, 27, 28, 29, 36, 47, 48, 51-55, 60-62, 68 and 69 Based on a Combination of Bratby-Carey and Burnett

Bratby-Carey is yet another manicure related device for humans that is not for pets and contains no disclosure whatsoever pertaining to styptic material, a container for storing styptic material or an applicator for applying styptic material.

Neither Bratby-Cary or Burnett are analogous prior art to Applicant's invention. Furthermore, there is no suggestion or incentive that would have led a person having ordinary skill in the art to combine the references as proposed in the rejection.

Moreover, even if the references were combined, it would not yield Applicant's claimed invention because neither of the references contains or suggests styptic material, a container for styptic material or an applicator for applying styptic material. Accordingly, the rejection lacks merit and should be withdrawn.

6. Conclusion

Forcing Applicant to pay Attorneys Fees in order to contest these meritless rejections would be unjust. Applicant respectfully requests a thorough review of the rejections during the pre-appeal conference, a withdrawal of the rejections discussed above and the speedy passage of this Application to Issue.

Respectfully submitted,

/JLK/

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